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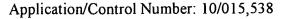


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/015,538	12/13/2001	John N. Staniforth	541.1011CON	4185	
23280	7590 12/17/2002				
DAVIDSON, DAVIDSON & KAPPEL, LLC			EXAMINER		
	485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			BENNETT, RACHEL M	
			ART UNIT	PAPER NUMBER	
			1615		
		DATE MAILED: 12/17/2002			

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)				
	10/015,538	STANIFORTH ET AL.				
Office Action Summary	Examiner	Art Unit				
	Rachel M. Bennett	1615				
Th MAILING DATE of this communication app ars on the cover she twith the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status						
1) Responsive to communication(s) filed on 13 L	<u>December 2001</u> .					
2a) ☐ This action is FINAL. 2b) ☑ Thi	s action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims						
4) Claim(s) 1-20 is/are pending in the application						
4a) Of the above claim(s) is/are withdray	vii iroin consideration.					
5) Claim(s) is/are allowed.						
6) Claim(s) 1-20 is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and/or election requirement. Application Papers						
9) The specification is objected to by the Examiner.						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner:						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.						
If approved, corrected drawings are required in reply to this Office action.						
12) The oath or declaration is objected to by the Examiner.						
Priority under 35 U.S.C. §§ 119 and 120						
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a) ☐ All b) ☐ Some * c) ☐ None of:						
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
a) ☐ The translation of the foreign language provisional application has been received. 15)☑ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.						
Attachment(s)						
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informal	y (PTO-413) Paper No(s) Patent Application (PTO-152)				
S. Patent and Trademark Office						



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DETAILED ACTION

The examiner acknowledges receipt of Preliminary Amendment A filed 12/13/01.

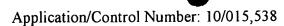
Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 2. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-33 of U.S. Patent No. 6,106,865. Although the conflicting claims are not identical, they are not patentably distinct from each other because each claims a process for making a pharmaceutical formulation comprising microcrystalline cellulose, an augmenting agent, and similar pharmaceutical actives.
- 3. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6,395,303. Although the conflicting claims are not identical, they are not patentably distinct from each other because each claims a process for making a pharmaceutical formulation comprising microcrystalline cellulose, an augmenting agent, and similar pharmaceutical actives.



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Claim Rejections - 35 USC § 103

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the teachings of Karetny et al. (US 5858409).

Karetny teaches a method for preparing a spray-dried compressible granular formulation for preparing pharmaceutical tablets in which hydrolyzed cellulose or microcrystalline cellulose is used as granulation aids (see cols. 1-2). The resulting granulation is compressed into pharmaceutical tablets, and conventional granulation and/or tableting additives such as surfactants (sodium lauryl sufate), disintegrants and antiadherents/flow aids (colloidal silica) are added (see col. 5). Pharmaceutical additives are disclosed in cols. 4-5.

Karetny compares hydrolyzed cellulose with microcrystalline cellulose and indicated hydrolyzed cellulose is preferred over microcrystalline cellulose. However, it is the position of the examiner that Karetny does not teach away from the use of microcrystalline cellulose as a granulation aid. Absent a comparative test between Karenty's granules and the present invention's granules, the examiner is unable to determine any unexpected results between the present invention and the prior art.



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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779. The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

R. Bennett December 13, 2002

> PRIMARY EXAMINE GROUP 1500/